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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,949	09/05/2003	Peter Hilfenhaus	P24008	7944
7055	7590	07/20/2005	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			MATZEK, MATTHEW D	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/654,949

Applicant(s)

HILFENHAUS ET AL.

Examiner

Matthew D. Matzek

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 74-77, 79 and 82-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-73, 78, 80 and 81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/9/04, 4/20/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS: 4/19/05

Election/Restrictions

1. Applicant's election with traverse of Group I with Specie A (claims 1-73, 78 and 80-81) in the reply filed on 6/15/2005 is acknowledged. The traversal is on the ground(s) that the additional search of the all claims would constitute no serious burden upon Examiner. This is not found persuasive because the non-elected claims belong to a different classification and the claimed article may be used for other absorbent purposes and formed via a process not claimed by Applicant. This has been recited in the previous Office Action.
2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Restriction is proper because a thorough and complete search of different inventions located in multiple classifications constitutes a serious burden upon Examiner.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1771

5. Claims 59-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 59 and 60 recite a "size" for the composite, but fail to recite to which dimension the "size" is intended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-12, 15, 20-21, 24-27, 29-32, 35-36, 72, 78 and 81 are rejected under 35 U.S.C. 102(e) as being anticipated by Kirkwood et al. (US 2004/0241214).

a. Kirkwood et al. teach a wound dressing comprising a liquid-permeable, apertured wound-facing surface with a plurality of particles comprising silver located behind the wound-facing surface (Abstract and [0052]). The Examiner equates the applied apertured fabric to Applicant's mesh structure. An absorbent may be located behind the layer of silver particles [0054-0056]. The apertured sheet may be made of polyethylene [0015]. The may have diameters between 113µm and 3.57mm and may be round, oval, or regular polygonal [0037,

Art Unit: 1771

calculation performed by Examiner]. The apertures make up about 0.1% to 50% of the sheet area [0016].

b. The absorbent layer or second layer is to be from 0.2mm to 10mm thick and have a basis weight that ranges from 50-500 g/m² [0056]. The absorbent layer may comprise a nonwoven fibrous web of viscose staple fibers [0056].

c. Claim 81 is rejected as the applied article may be used as a diaper and meets the structural and compositional limitations set forth in instant claim 1.

Claim Rejections - 35 USC § 102/103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-23 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kirkwood et al. (US 2004/0241214).

a. Although Kirkwood et al. do not explicitly teach the claimed feature of a specified liquid-absorbing capacity, it is reasonable to presume that said property is inherent to Kirkwood et al. Support for said presumption is found in the use of like materials (i.e. a two layer absorbent article of comprising liquid permeable layer with an antimicrobial metal in elemental form). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of the specified liquid-absorbing capacity would

obviously have been present one the Kirkwood et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

8. Claims 13-14, 16-19, 28, 50-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkwood et al. (US 2004/0241214).

a. The applied publication is silent as to the thickness of the first, wound-facing fabric. However as the publication does teach a thickness for the second layer of 0.2mm to 10mm it would have been obvious to one of ordinary skill in the art at the time of the invention to have made both layers within the same range of thicknesses motivated by consistency within the article and the ability to interchange the layers with each other. This same line of reasoning would have made it obvious to make the second layer with the apertured polyethylene layer used as the wound-facing sheet.

b. Provided both layers of Kirkwood et al. were to be made of common materials, thicknesses, and basis weights an article comprising a two-layered apertured polyethylene sheet, with an overall thickness of 0.4mm to 20mm and basis weight of 100-1000 g/m².

c. Although Kirkwood et al. does not explicitly teach the claimed peeling strength or maximum tensile strength, it is reasonable to presume that said properties are inherent to Kirkwood et al. Support for said presumption is found in the use of like materials (i.e. a two layer absorbent article of comprising liquid

permeable layer with an antimicrobial metal in elemental form). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of peeling strength and maximum tensile strength would obviously have been present one the Kirkwood et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

d. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80.

9. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkwood et al. as applied to claim 32 and further in view of Burton (US 6,903,243). Kirkwood et al. is silent as the use of a superabsorber comprising a polymer having recurring units derived from acrylic acid and derivatives thereof.

a. Burton teaches a multilayer absorbent wound dressing comprising an absorbent layer of 0-30 parts by weight of an acrylic or methacrylic acid ester (col. 4, lines 55-62). The applied invention may also include antibacterial silver (col. 12, lines 31-34).

b. Since both Kirkwood et al. and Burton are from the same field of endeavor, (i.e. multilayer absorbent wound dressings comprising superabsorbents and silver), the purpose disclosed by Burton would have been recognized in the pertinent art of Kirkwood et al.

Art Unit: 1771

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the wound dressing of Kirkwood et al. with the superabsorbent of Burton with the motivation of creating a highly absorbent article.

10. Claims 37-49 and 61-71, 73, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkwood et al. as applied to claims 1, 13-14, 16-19, 28 and 50-60 and further in view of Burrell et al. (US 6,333,093). Kirkwood et al. is silent as the anti-bacterial silver being provided as a coating, sheet or film between the first and second layers and the incorporation of a layer of aluminum between the silver layer and the first layer.

a. Burrell et al. teach a multilayer anti-microbial material formed to produce an interference color, and thus an indicator of anti-microbial effect (Abstract). The applied invention provides a base layer of a partly reflective layer and a top layer containing at least one anti-microbial metal (col. 2, lines 46-55). The base layer may be aluminum and the top layer is preferably silver (col. 3, lines 1-8). The top layer when contacted with an alcohol or water-based electrolyte releases ions of the silver metal into the alcohol or water-based electrolyte at a concentration to provide a localized anti-microbial effect. A color change occurs upon contact with an alcohol or water-based electrolyte so as to indicate activation of the material (col. 3, lines 45-56). Claim 15 provides for the base and top layer composite to be placed in between the perforated, wound-facing layer

and an absorbent layer of a wound dressing with the aluminum base layer facing the perforated layer and the top, silver layer facing the absorbent layer.

b. Since both Kirkwood et al. and Burrell et al. are from the same field of endeavor, (i.e. antimicrobial wound dressings) the purpose disclosed by Burrell et al. would have been recognized in the pertinent art of Kirkwood et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the antimicrobial wound dressing of Kirkwood et al. with the motivation of providing the wound dressing with a visible indicator of anti-microbial activity, so as to minimize the over application of antimicrobial agents and unnecessary wound dressing removal (col. 1, line 66 – col. 2, line 3).

d. The applied publications are silent as to the amount of silver that is present in the wound dressings (claims 40, 42-44 and 67).

e. Although Kirkwood et al. nor Burrell et al. do not explicitly teach the claimed features of a liquid-absorbing capacity of from about 400 g/m² to about 800 g/m², the instantly claimed levels at which antimicrobial metal is present, or the amount of silver released over 24 hours, it is reasonable to presume that said properties are inherent to Kirkwood et al. Support for said presumption is found in the use of like materials (i.e. a two layer absorbent article of comprising liquid permeable layer with an antimicrobial metal in elemental form). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of the specified liquid-absorbing capacity, level of

Art Unit: 1771

antimicrobial metal present and the amount of silver released over 24 hours would obviously have been present one the Kirkwood et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

d. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner*, et al. (CCPA) 186 USPQ 80.

e. Claims 73 and 80 are rejected as the applied article is an antimicrobial wound covering composite.

Conclusion

The German references provided by Applicant have not been reviewed by Examiner. English translations have not been provided.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NORCA TORRES
PRIMARY EXAMINER